

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 30834 of 2005(U)

PETITIONER:

R.SAJIKUMAR, CLASS IV EMPLOYEE,
CROPPING SYSTEMS RESEARCH CENTRE,
KERALA AGRICULTURAL UNIVERSITY, KARAMANA,
THIRUVANANTHAPURAM, PIN-695 002.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

RESPONDENTS:

1. KERALA AGRICULTURAL UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, MAIN CAMPUS,
VELLANIKKARA, THRISSUR.

2. THE VICE CHANCELLOR,
KERALA AGRICULTURAL UNIVERSITY,
MAIN CAMPUS, VELLANIKKARA, THRISSUR.

BY ADV. SMT.P.JAYA, SC, AGRL. UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C) NO: 30834/2005 U

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE LETTER NO. GA/J1/34253/02 DT. 27/4/2003 OF THE REGISTRAR, KERALA AGRIL. UNIVERSITY.

EXT.P2. COPY OF THE REPRESENTATION BY THE PETITIONER BEFORE THE REGISTRAR OF THE UNIVERSITY DT. 29/4/2003.

EXT.P3. COPY OF THE ORDER NO. GA/J1/34253/02 DT. 6/5/03 OF THE REGISTRAR.

EXT.P4. COPY OF THE LETTER NO. GA J1/ 34253/2002 DT. 8/8/03 OF THE REGISTRAR.

EXT.P5. COPY OF THE REPRESENTATION BY THE PETITIONER BEFORE THE REGISTRAR DT. 26/7/05.

EXT.P6. COPY OF THE DRAFT STATUTES PRESCRIBING METHOD OF APPOINTMENT, QUALIFICATIONS, AGE LIMIT, SALARY AND ALLOWANCES AND DUTIES IN RESPECT OF THE POST OF TECHINICIAN BLACKSMITH ALONG WITH CERTAIN OTHER POSTS.

EXT.P7. COPY OF THE ORDER NO.G A/83/35566/98 DT. 20/09/99 OF THE R2.

RESPONDENT'S EXHIBITS NIL.

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 30834 OF 2005-U

JUDGMENT

The petitioner is the son of late B.Raveendran Nair, who was an employee of the 1st respondent Kerala Agricultural University. The petitioner's father died on 10.5.2002, while working as a Class IV employee in the service of the University. He applied for appointment under the dying-in-harness scheme. He has passed S.S.L.C and I.T.I (Blacksmith) course. So, he was eligible to be considered for appointment as Technician (Blacksmith). He applied for the said post. The second preference shown in the application was to the post of Class IV employee. By Ext.P1 communication dated 27.4.2003, the University informed the petitioner that he cannot be appointed in the post of Technician (Blacksmith), as there is a stay from the High Court against filling up the post. But, he is eligible for appointment as Class IV employee, it was stated. The petitioner replied by submitting Ext.P2. He stated that the stay relates to the appointment in the post of Technician (Fitter) and not in the post of Technician (Blacksmith). So, steps may be taken to appoint him as Technician (Blacksmith). It was further stated in Ext.P2 that if, for any reason, the said appointment cannot

be made, he may be appointed as Class IV employee. Pursuant to the said reply dated 29.4.2003, the petitioner was appointed in the post of Class IV employee, by Ext.P3 order of the University dated 6.5.2003. By Ext.P4 communication dated 8.8.2003, the University informed the petitioner that the reason given in Ext.P1 for not appointing him as Technician (Blacksmith) may be read as absence of statute in the place of stay order by the High Court. The petitioner again submitted Ext.P5 representation, praying that he may be accommodated in Class III post of Technician (Blacksmith). Ext.P6 is the draft statutes notified by the University. The said draft is pending before the Chancellor for approval, it is submitted. As per the statute, the qualifications for appointment to the post of Technician (Blacksmith) are: (1) Pass in 7th Standard. (2) Pass in National Trade Certificate or equivalent examination in the Trade of Blacksmithy recognised by the Government of Kerala. (3) Experience as Blacksmith in any Government approved workshop for not less than two years.

2. The petitioner submits, he was having the qualifications prescribed as per the draft statute. So, the omission of the University to appoint him in the post of Technician (Blacksmith) is illegal, it is submitted. Therefore, this writ petition was filed, seeking a direction to the respondents to appoint him as Technician (Blacksmith) with effect from 6.5.2003.

3. The University has filed a counter affidavit, in which it is submitted that there is only one sanctioned post of Technician (Blacksmith), which has been lying vacant for quite some time. No need was felt for filling up the said vacancy. Further, it is also submitted that there is a Division Bench decision of this Court against making appointment to the posts not covered by the statutes. The petitioner has filed a reply affidavit and along with that he has produced Ext.P7 order of the University dated 20.9.1999, making appointment to the post of Technician (Electrician) Grade II. It is also a post covered by Ext.P6 draft rules, it is submitted. There are no statutes prescribed for making appointment to that post. So, the ground taken by the University for denying appointment to him to the post of Technician (Blacksmith) is untenable, it is submitted.

4. Heard the learned counsel on both sides. The University being a statutory authority, can make appointments to the posts under it, only after prescribing the qualifications and method of appointment to those posts, by framing appropriate statutes. Though a post of Technician (Blacksmith) is created, if no qualification or method of appointment is prescribed for it, the University cannot make any appointment to that post. The said stand of the University cannot be said to be illegal or ultra vires. But, the petitioner points out, relying on Ext.P7, that appointments have actually been made to

the post of Technician (Electrician) Grade II in 1999, before prescribing the statutes. The petitioner's claim for appointment was considered in 2003. Even if the University made certain irregular appointments in 1999, it cannot be insisted that the same should be repeated in 2003 also. It is a settled position in law that for satisfying the requirement of equality, this Court under Article 226 of the Constitution of India cannot ask the University or the Government to repeat an illegality. So, the stand of the University that without any statute appointments cannot be made to the post of Technician (Blacksmith), cannot be interfered with. Further, even assuming the statutes are framed, if there is no necessity to fill up the post, the University can very well decide to keep the same vacant. No court can compel the management of an establishment to fill up all the vacancies under it.

5. The learned counsel for the petitioner submits that if the statute prescribing the qualification and method of appointment to the post of Technician (Blacksmith) is approved and the University decides to fill up the post, his claim may be considered. This is a new point raised at the time of hearing of the writ petition. The petitioner is already appointed in the post shown as second option by him. If such a candidate is entitled to claim appointment to the first option post, as and when appointment is made to

that post, as per the scheme of appointment under the dying-in-harness scheme, the petitioner will be free to raise that claim before the competent authority, as and when occasion arises.

The Writ Petition is disposed of as above.

14th September, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/